

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROLAND ADAMS,

Defendant.

CR. NO. 02-0560 EJG

ORDER DENYING MOTION FOR NEW
TRIAL

Defendant, a federal prisoner proceeding pro se, has filed a motion for new trial. After reviewing the record and the documents filed in connection with the motion, and for the reasons set forth below, the motion is DENIED.

BACKGROUND¹

Defendant was indicted on June 20, 2002 on several counts of wire fraud and money laundering and two counts of criminal forfeiture (hereafter referred to as the "fraud case", Cr. No. S-

¹ The background section is not exhaustive and only includes procedural history relevant to the pending motion.

1 02-0257), and on December 19, 2002 on one count of unlawful
2 procurement of naturalization and one count of making a false
3 statement (hereafter referred to as the "immigration case", Cr.
4 No. S-02-0560). The cases were ordered related, but were not
5 consolidated. The instant order concerns a motion in the
6 immigration case.

7 On August 18, 2003, in connection with the fraud case,
8 defendant pled guilty to one count of conspiracy to commit wire
9 fraud (Count One) and one count of conspiracy to launder money
10 (Count Seven), and agreed to waive a jury trial on the forfeiture
11 counts (Counts Nine and Ten). On September 29, 2003, following a
12 hearing on those counts, the court issued an order forfeiting
13 real property located at 9501 Misty River Way in Elk Grove,
14 California (hereafter referred to as the "Misty River Way
15 property"). In December of 2003, defendant moved to withdraw his
16 guilty pleas in the fraud case, which motion was denied after an
17 evidentiary hearing on March 19, 2004.

18 On April 12, 2004, defendant proceeded to jury trial in the
19 immigration case and was convicted on both counts. The fraud and
20 immigration cases were consolidated for sentencing and defendant
21 was sentenced on March 11, 2005 to an aggregate term of 97 months
22 imprisonment and three years supervised release. In addition,
23 restitution in the amount of \$1.2 million was imposed in the
24 fraud case. Defendant appealed the convictions and sentence in
25 both cases.

1 In a memorandum opinion filed June 29, 2006, the Ninth
2 Circuit affirmed defendant's convictions and sentence in both the
3 fraud and immigration cases in full, with one exception. The
4 appellate court remanded the forfeiture order in the fraud case,
5 finding that the district court erroneously considered funds
6 acquired outside the time period of the indictment as tainted
7 proceeds in its calculation of fraud proceeds.²

8 Meanwhile, prior to resolution of the appeal, defendant
9 began to file numerous post-conviction motions in both the fraud
10 and immigration cases, which, the court held in abeyance, **first**,
11 pending resolution of the appeal, and **second**, pending resolution
12 of the issue remanded by the appellate court. Following
13 appellate remand, a series of status conferences and a hearing
14 were held. These culminated in the entry of an amended judgment
15 in the fraud case on July 20, 2007 (imposing the same sentence
16 with a modified forfeiture order) and issuance of a briefing
17 schedule for all of defendant's pending motions.

18 This order addresses one of those motions: the motion for
19 new trial in the immigration case. Filed originally July 3,
20 2006, and amended July 13, 2006, the motion asserts as a basis
21 for relief issues of prosecutorial misconduct and presentation of
22

23 ² The appeal was denied in all other respects. Specifically, the court noted, "Adams
24 raises a host of other challenges to his convictions and sentence. None has merit. Adams
25 convictions and sentence are AFFIRMED, except that we VACATE the district court's forfeiture
26 order and REMAND for further proceedings consistent with this disposition." United States v.
Adams, 189 Fed. Appx. 600 (9th Cir. 2006).

1 false evidence. The government argues, and the court agrees,
2 that the motion is time-barred. Motions for new trial must be
3 made within three years after entry of verdict if based on newly
4 discovered evidence, or within seven days after entry of verdict
5 if based on any other ground. Fed. R. Crim. P. 33(b). The
6 motion, filed more than two years after entry of verdict in the
7 immigration case clearly does not meet the seven-day requirement.
8 Made aware of this by the government's opposition, in his reply
9 brief, filed in October of 2006, defendant maintains that the
10 grounds raised in his motion, misconduct and presentation of
11 false evidence, constitute newly discovered evidence. He
12 reiterates this argument in a supplemental brief entered on the
13 docket May 9, 2007 and filed in connection with this court's May
14 2007 hearing on the appellate remand. In this latter document,
15 titled "New Evidence from Remand Proceedings in Support of Motion
16 for New Trial", defendant cites facts contained in the
17 government's brief, "Government's Analysis of Exhibit 10 through
18 18 and Proposed Resolution of Forfeiture issue on Remand" as "new
19 evidence in support of his pending motion for new trial."
20 However, as pointed out during the hearing after remand, all of
21 the information contained in the government's brief was part of
22 the record, **introduced at the forfeiture hearing held in**
23 **September 2003.** It was not then, and is not now, newly
24 discovered evidence as that term is defined by law.

1 To prevail on a rule 33 motion for new trial based on newly
2 discovered evidence, defendant must meet a five-part test: 1) the
3 evidence must be newly discovered; 2) the failure to present the
4 evidence earlier must not be based on a lack of diligence by
5 defendant; 3) the evidence must be material; 4) the evidence must
6 be neither cumulative nor impeaching; and 5) the evidence must
7 indicate that a new trial would probably result in acquittal.
8 United States v. Kulczyk, 931 F.2d 542, 548 (9th Cir. 1991).

9 Here, the evidence defendant contends is newly discovered meets
10 none of these requirements. In the court's analysis of the
11 government's exhibits 10 - 18 during the hearing after remand, it
12 put to rest any notion the documents used as a basis for
13 determining the fraudulent proceeds were false. Moreover, the
14 documents were part of the record and were available to defendant
15 during both the forfeiture hearing in the fraud case and the jury
16 trial in the immigration case.

17 Based on the foregoing, defendant's motion for new trial is
18 DENIED.

19 IT IS SO ORDERED.

20 Dated: December 20, 2007

21 /s/ Edward J. Garcia
22 EDWARD J. GARCIA, JUDGE
23 UNITED STATES DISTRICT COURT
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